v. *McLoon,* 5 Gray (Mass.) 91, quashing an indictment because "A. D." was omitted from the date; or *Harwell* v. *State,* 22 Tex. App. 251, to the effect that a written verdict of "guity" is not equivalent to one of "guilty." There seems to be developing a much fairer interpretation of what the court in *Westbrook* v. *State,* — Tex. Cr. App. —, 227 S. W. 1104, calls "the sensible proposition that incorrect grammar, bad spelling, bad handwriting, the use of words not technically in their correct sense or places will none of them make an indictment bad unless same causes the thing intended to be charged to lack of sense or certainty."

CRIMINAL LAW—EVIDENCE—ILLEGAL SEARCH AND SEIZURE.—Defendant was convicted of violation of the state liquor law upon evidence obtained under a search warrant conforming to an unconstitutional search and seizure law. Before trial a demand was made for the return of the property seized and an application for an order directing its return was denied. *Held,* conviction should be set aside. *People* v. *Le Vasseur* (Mich., 1921), 182 N. W. 60.

The unconstitutionality of the statute in question (Act No. 53, Sec. 25, P. A. 1919) was decided in *People* v. *De La Mater,* (Mich., 1921), 182 N. W. 57. In the instant case the Michigan court shows no disposition to question the doctrine laid down in *People* v. *Marxhausen,* 204 Mich. 559, which followed the respectable, though often questioned, authority of *Boyd* v. *United States,* 116 U. S. 616, and *Weeks* v. *United States,* 232 U. S. 383, L. R. A., 1915 B, 834. See 19 MICH. L. REV. 355, and 9 ILL. L. REV. 43. When the objection is first made at the trial the cases are agreed that the evidence is admissible, no matter how obtained, partly, at least, on the theory that the court will not halt the trial to determine collateral matters. *Adams* v. *New York,* 192 U. S. 585; *People* v. *Aldorfer,* 164 Mich. 676. It may be suggested, however, that the court does exactly that whenever the admissibility of evidence depends upon a collateral question; *e. g.,* whether a confession offered in evidence is free and voluntary. It would seem, if the chief concern is to protect the defendant's constitutional rights rather than to determine his innocence or guilt, that the question might be raised at any time. As was well said by the Supreme Court of Kansas:

> "The federal Constitution was not framed for the special protection of those who violate statutes, but for the good of the entire citizenship." *State* v. *Missouri Pac. Ry.,* 96 Kan. 609.

It is submitted that the defendant's proper remedy is not immunity from punishment for crime, but a civil action against the trespassing officers. For a full discussion and large collection of cases, see WIGMORE ON EVIDENCE, §2264. See also *supra,* p. 93.

CRIMINAL LAW—MISTAKE OF FACT AS A DEFENSE—BIGAMY.—Defendant was indicted for bigamy under a statute providing that whoever, being married, shall marry another person during the life of the former husband or wife shall be guilty of a felony, unless at the time of the second marriage the defendant has obtained a divorce. The defendant, without having obtained a divorce, married again during the life of his former wife. As a

defense, the defendant set up that he had reasonable grounds to believe, and did believe in good faith, that a divorce had been secured. *Held,* no defense. The defendant did the act prohibited by the statute and is guilty of the crime without regard to his good faith in contracting the second marriage. *Rex* v. *Wheat,* [1921], 2 K. B. 119.

The majority of American courts follow the rule as laid down in the principal case. *People* v. *Spoor,* 235 Ill. 230; *Russell* v. *State,* 66 Ark. 185; 7 CORPUS JURIS, page 1165, and cases there cited. In several American jurisdictions, however, where the statute is practically identical with the English statute, it is held that a bona fide belief on reasonable grounds that a divorce had been granted is a defense. *Squire* v. *State,* 46 Ind. 459; *Baker* v. *State,* 86 Neb. 775. These jurisdictions hold that the statute must be interpreted in the light of the common law rule that before there can be a crime there must be a guilty mind, and if one is reasonably misled by circumstances which, if true, would make the act for which the prisoner is indicted an innocent act, he is not guilty. This general principle is laid down in *Queen* v. *Tolson,* [1889], 23 Q. B. Div. 168, but the court in the principal case refused to follow it on the ground that it was not in point. In that case the defendant was indicted for bigamy under the same statute, to which there was a proviso that the act did not include any person whose husband or wife had been continually absent from home for seven years and was not known by such person to have been living within that time. Defendant's husband had been away from home for less than seven years; but the defendant, thinking her husband to be dead, married again. Defendant's former husband was in fact alive at the time. Upon indictment the court held the defendant not guilty because she bona fide and reasonably believed her husband dead. Defendant came clearly within the words of the statute, because she did marry before her former husband was in fact dead, or before she could legally consider him dead. But the court in the principal case said that the defendant in *Queen* v. *Tolson, supra,* did not intend to do the act prohibited by the statute, because she believed on reasonable grounds that her husband was dead, while the defendant in the principal case did intend to do the act prohibited by the statute, regardless of his good faith in contracting the second marriage. The distinction is difficult to see.

CRIMINAL LAW—MISTAKE OF FACT AS A DEFENSE—CRIMINAL INTENT.—The Larceny Act of 1861 provides that "Whosoever shall unlawfully and wilfully kill * * * any house dove or pigeon under such circumstances as shall not amount to larceny at common law" shall be liable to a penalty. D admitted the killing, but stated in his answer that, when he shot it, he thought the pigeon was a wild one which he might lawfully kill. *Held,* admitting statement of D to be true, it is no defense. *Horton* v. *Gwynne,* [1921], 2 K. B. 661.

The general rule is that evil intent is requisite to make an act criminal, and mistake of fact, if honest and reasonable, is a good defense. 1 BISHOP CRIM. LAW, Sec. 301; BISHOP, STATUTORY CRIMES, Secs. 132, 1022. The only serious exception to this rule is in the case of acts *mala prohibita,* where,